

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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**CASE NO. A-6636
PETITION OF JOSEPH R. POULAS AND KRISTEN LEJNIEKS**

**OPINION OF THE BOARD
(Opinion Adopted November 6, 2019)
(Effective Date of Opinion: November 21, 2019)**

Case No. A-6636 is an application for a variance needed to allow the installation of HVAC units. The proposed construction requires a variance of 2.75 feet as it is within 5.25 feet of the west side lot line. The required setback is eight (8) feet, in accordance with Section 59-4.4.9.B.2 of the Zoning Ordinance.

The Board held a hearing on the application on November 6, 2019. Petitioner Joseph R. Poulas appeared at the hearing in support of the application, assisted by architect Richard J. Vitullo, AIA.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot P3, Block 34, Chevy Chase Section 2 Subdivision, located at 9 East Irving Street, Chevy Chase, Maryland, 20815, in the R-60 Zone. The subject property is a four-sided corner lot with an area of 8,416 square feet, located on the north side of East Irving Street and the west side of Brookeville Road. See Exhibits 3 and 8(a).

2. The Justification Statement ("Statement") at Exhibit 3 notes the following with respect to the shape of the property:

The lot is trapezoidal in shape with the front property line 52.85' long and the rear property line 81.82' long. The west side property line (125' long) is perpendicular to the front and rear lines; the 128.31' side street property line along Brookeville Road angles towards the east at a 77-degree angle.

3. The Statement asserts that because of the angled lot line along Brookeville Road and the shortened frontage along East Irving Street, the house was located as far from

Brookeville Road as possible, "resulting in its atypical location closer to the side property line, which is 9'-3" away from the house." It notes that this is "about 4'-5" closer to the west side property line than is normal for houses vis-à-vis the side property lines in this neighborhood, and street." See Exhibit 3. The Petitioners include a Neighborhood Plan with their submission which illustrates the narrowness of the subject property's west side yard relative to the side yards of other properties on the street. See Exhibit 8(b).

4. The Statement notes that "[t]he standard location for HVAC units in this (and most neighborhoods in Montgomery County for small R-60 zoned houses) is in the side yard ..., and that "typically, side yards are wide enough to allow HVAC units to be located there outside of an 8'-0" minimum setback from the side property line." It states that the HVAC units for the house on the abutting property to the west are located in the side yard between that house and the house on the subject property. See Exhibit 3.

5. The Statement states that the Petitioners purchased the subject property in March of this year, and are therefore not responsible for the shape, location, or configuration of the property. The Statement asserts that granting the variance requested is the minimum necessary to overcome the practical difficulties that full compliance with the Zoning Ordinance would entail because the proposed HVAC units would be located in same side yard open space as the neighbors' units at 7 East Irving Street, and because the units cannot be located in the front yard along East Irving Street or the side street yard along Brookeville Road, and cannot be located in the rear yard due to its small size and existing improvements. Finally, the Statement notes that granting the variance to allow the proposed HVAC units will not harm the intent or integrity of the applicable master plan, and would not be adverse to neighboring property owners, stating that "[t]he next door neighbors at 7 East Irving St. also have their HVAC units in this shared side yard; so placing the HVAC units for 9 East Irving St. there in the same shared side yard would not cause any unique or undue noise to occur there." See Exhibit 3.

6. The record contains a letter from the abutting neighbors at 7 East Irving Street indicating that they have no issue with the Petitioners' plan to locate the proposed HVAC units on the side of their home, as shown in the documents presented to those neighbors. See Exhibit 7.

7. At the hearing, Mr. Vitullo testified that the subject property is an unusually shaped corner lot, and that the narrow frontage along East Irving Street and the desire to place the house away from Brookeville Road caused the house to be located towards the western side of the property. Mr. Vitullo testified that his clients are seeking to locate the proposed HVAC units in their side yard, which is the "norm" for this street. He testified that the subject property has a side yard that is 9.3 feet wide, that the side yards of twelve of the fourteen houses he surveyed on the street are wider than that, and that the average side yard is 13.8 feet wide. Mr. Vitullo testified that this constitutes a pattern of side yard setbacks being of a certain size along this street, and that the side yard setback for the subject property does not fit this pattern. He testified that given the width of the other properties' side yards, all but one could legally locate an HVAC unit on the side of their house. See Exhibit 8(b).

In response to a Board question, Mr. Vitullo testified that there is a solid wood fence between the subject property and the abutting property to the west (7 East Irving Street).

8. Petitioner Joseph Poulas testified that the existing house was built between 1892 and 1900, and has no air conditioning. He testified that the abutting property to the west has its HVAC units in the side yard between the house on that property and the subject property. Mr. Poulas testified that they cannot put the HVAC units on the east (Brookeville Road) side of the house because that is considered a front yard.

CONCLUSIONS OF LAW

Based on the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E, as follows:

1. *Section 59-7.3.2.E.2.a - one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59-7.3.2.E.2.a.i. - exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the subject property is a uniquely shaped, trapezoidal corner lot with an unusually narrow side yard as compared with the side yards of all but one of the other 14 properties surveyed on the street. The Board finds that these circumstances constitute an extraordinary condition peculiar to this property. See Exhibits 3, 4, and 8(b).

2. *Section 59-7.3.2.E.2.b. the special circumstances or conditions are not the result of actions by the applicant;*

The Board finds that the Petitioners purchased this property earlier this year, and are not responsible for the shape of the property or for the narrowness of its side yard.

3. *Section 59-7.3.2.E.2.c. the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is the minimum necessary to overcome the practical difficulties that would otherwise be imposed on this property by the Zoning Ordinance on account of its shape and resultant narrow side yard, which combine to limit the available locations for the proposed HVAC units, and to preclude their location in the side yard absent variance relief. The Board notes that the existing house was built between 1892 and 1900, and does not have air conditioning.

4. *Section 59-7.3.2.E.2.d. the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan; and*

The Board finds that granting the variance will continue the residential use of the property, and thus will not substantially impair the intent and integrity of the Bethesda-Chevy Chase Master Plan.

5. *Section 59-7.3.2.E.2.e. granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

The Board finds that the neighbors who would be most affected by the grant of the proposed variance have submitted a letter indicating that they have no issue with the installation of the proposed HVAC units. See Exhibit 7. In addition, the Board finds that the grant of the variance would allow for the installation of the proposed HVAC units in the same side yard area as their neighbors' units are located. See Exhibit 3. Finally, the Board notes that there is a solid wood fence between the two properties. See Exhibit 4. Thus the Board finds that the grant of the requesting variance, to allow installation of the proposed HVAC units, will not be adverse to the use and enjoyment of abutting or confronting properties.

Accordingly, the requested variance of 2.75 feet from the side lot line setback is **granted**, subject to the following conditions:

1. Petitioners shall be bound by the testimony and exhibits of record; and
2. The HVAC units shall be located as shown on Exhibit 4.

Therefore, based upon the foregoing, on a motion by John H. Pentecost, Chair, seconded by Mary Gonzales, with Bruce Goldensohn, Vice Chair, Katherine Freeman, and Jon W. Cook in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


John H. Pentecost, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 21st day of November, 2019.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.